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VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097026,882	02/19/98	ROSENBLUM	

HM12/0924

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HOUSTON TX 77071

EXAMINER
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ART UNIT	PAPER NUMBER
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09/24/99

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/026,882

Applicant(s)  
Rosenblum

Examiner  
Yvonne Eyler

Group Art Unit  
1642



☒ Responsive to communication(s) filed on Jul 14, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ~~30 days~~ thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) 1-6 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 7-17 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1642

*Election/Restriction*

1. Applicant's election without traverse of Group II, claims 8-17 in Paper No. 4 is acknowledged.

Claims 1-6 are withdrawn from further consideration. Upon further inspection, the claims of Group II, i.e. claims 8-17, are found to require further restriction as follows:

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 8-15, drawn to methods of treating neoplasia or neoplastic cells comprising administering immunotoxin, classified in class 424, subclass 183.1.
- II. Claims 16 and 17, drawn to a method of purging bone marrow of cancer cells, classified in class 424, subclass 140.1.

3. The inventions are distinct, each from the other because of the following reasons:

4. The inventions of Groups I, claims 8-15; and II, claims 16 and 17 are drawn to entirely different methods having different method steps and resulting in different outcomes. A search and consideration of the two different method is non-cohesive, one method involving removal of tissue, purging, and reinfusion which is not necessary to be considered for the method of Group I which involves simply administering an immunotoxin.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Art Unit: 1642

6. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne Eyler, Ph.D. whose telephone number is (703) 308-6564. The examiner can normally be reached on Monday through Friday from 830am to 630pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703) 308-4310. The fax phone number for this Group is (703) 305-3014 or (703) 308-4242.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [paula.hutzell@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
Yvonne Eyler, Ph.D.  
Primary Examiner  
September 23, 1999